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Washington, D.C. 20231

On August 30, 2000

TOWNSEND and TOWNSEND and CREW LLP

By: Eleanor J. Taylor  
Eleanor J. Taylor

PATENT  
Attorney Docket No.: 19880-001620

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

Donald F. Gordon et al.

Application No.: 09/538,562

Filed: March 29, 2000

For: DEMAND-CAST SYSTEM AND  
BANDWIDTH MANAGEMENT FOR  
DELIVERY OF INTERACTIVE  
PROGRAMMING

Examiner: Unassigned

Art Unit: 2739

APPOINTMENT OF ASSOCIATE  
ATTORNEY UNDER 37 CFR § 1.34(b)

Box Missing Parts  
Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

Under 37 CFR § 1.34(b), applicant's undersigned principal attorney of record appoints P. G. Scott Born, Registration No. 40,523, as an associate attorney to prosecute this case and to transact all business in the Patent and Trademark Office connected therewith. The associate attorney's address and telephone number are as follows.

Telephone: (650) 326-2400

Donald F. Gordon et al.  
Application No.: 09/538,562  
Page 2

PATENT

Address: Townsend and Townsend and Crew LLP  
Two Embarcadero Center, 8<sup>th</sup> Floor  
San Francisco, California 94111-3834

Respectfully submitted,



James K. Okamoto  
Reg. No. 40,110

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, 8th Floor  
San Francisco, California 94111-3834  
(415) 576-0200  
Fax (415) 576-0300

PA 3093397 v1



Attorney Docket No. 019880-001620

**POWER OF ATTORNEY BY ASSIGNEE**

**DIVA SYSTEMS CORPORATION**, located at 800 Saginaw Drive, Redwood City, California 94063, is the Assignee of the invention entitled:

**DEMAND-CAST SYSTEM AND BANDWIDTH MANAGEMENT FOR DELIVERY OF  
INTERACTIVE PROGRAMMING**

the specification of which was filed on March 29, 2000 as Application No. 09/535,562.

The Assignment accompanying this Power of Attorney has been reviewed by the undersigned. The undersigned certifies that to the best of the undersigned's knowledge and belief, title is in the Assignee. The undersigned (whose title is supplied below) is empowered to act on behalf of the Assignee.

Assignee hereby appoints the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

James K. Okamoto, Reg. No. 40,110  
William L. Shaffer, Reg. No. 37,234

---

Send Correspondence to:

James K. Okamoto, Esq.  
TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, 8th Floor  
San Francisco, CA 94111-3834

Direct Telephone Calls to:

James K. Okamoto  
Reg. No. 40,110  
(650) 326-2400

---

Date: 7/12/00

**DIVA SYSTEMS CORPORATION**

By Sophanie A. Stowes

**COPY**

Attorney Docket No.: 19880-001620  
Client Reference No.: 247-CIP1

**ASSIGNMENT OF PATENT APPLICATION**

**JOINT**

WHEREAS, Donald F. Gordon, of 465 Gabilan Street #10, Los Altos, CA 94022, Sadik Bayrakeri, of 733 Shell Boulevard #104, Foster City, CA 94404, Edward A. Ludvig, of 831 Canyon Road, Redwood City, CA 94061, Eugene Gershten, of 1418 Valota Road, Redwood City, CA 94061, Jeremy S. Edmonds, of 18923 Sydney Circle, Castro Valley, CA 94546, John P. Comito, of 907 Pleasant Hill Road, Redwood City, CA 94061, Alfred Li, of 161 Positano Circle, Redwood City, CA 94065, hereinafter referred to as "Assignors," are the inventors of the invention described and set forth in the below-identified application for United States Letters Patent:

Title of Invention: **DEMAND-CAST SYSTEM AND BANDWIDTH MANAGEMENT FOR DELIVERY OF INTERACTIVE PROGRAMMING**

Date(s) of execution of Declaration:

Filing Date: **March 29, 2000**

Application No.: **09/538,562**

WHEREAS, DIVA Systems Corporation, a corporation of the state of Delaware, located at 800 Saginaw Drive, Redwood City, CA, 94063, hereinafter referred to as "ASSIGNEE," is desirous of acquiring an interest in the invention and application and in any U.S. Letters Patent and Registrations which may be granted on the same;

For good and valuable consideration, receipt of which is hereby acknowledged by Assignors, Assignors have assigned, and by these presents do assign to Assignee all right, title and interest in and to the invention and application and to all foreign counterparts (including patent, utility model and industrial designs), and in and to any Letters Patent and Registrations which may hereafter be granted on the same in the United States and all countries throughout the world, and to claim the priority from the application as provided by the Paris Convention. The right, title and interest is to be held and enjoyed by Assignee and Assignee's successors and assigns as fully and exclusively as it would have been held and enjoyed by Assignors had this Assignment not been made, for the full term of any Letters Patent and Registrations which may be granted thereon, or of any division, renewal, continuation in whole or in part, substitution, conversion, reissue, prolongation or extension thereof.

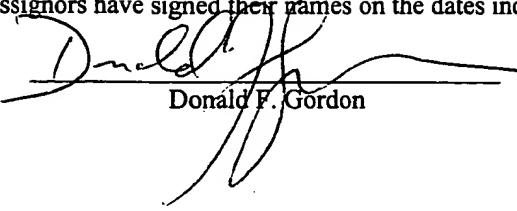
Assignors further agree that they will, without charge to Assignee, but at Assignee's expense, (a) cooperate with Assignee in the prosecution of U.S. Patent applications and foreign counterparts on the invention and any improvements, (b) execute, verify, acknowledge and deliver all such further papers, including patent applications and instruments of transfer, and (c) perform such other acts as Assignee lawfully may request to obtain or maintain Letters Patent and Registrations for the invention and improvements in any and all countries, and to vest title thereto in Assignee, or Assignee's successors and assigns.

Assignors hereby authorize and request Townsend and Townsend and Crew LLP, Two Embarcadero Center, 8<sup>th</sup> Floor, San Francisco, CA 94111-3834, to insert herein above the application number and filing date of said application when known.

Assignment  
Attorney Docket No.: 19880-001620  
Page 2

IN TESTIMONY WHEREOF, Assignors have signed their names on the dates indicated.

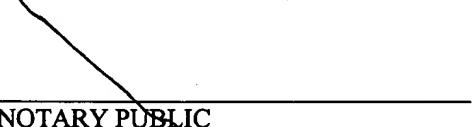
Dated: 8/2/2000

  
Donald F. Gordon

STATE OF CALIFORNIA )  
COUNTY OF ) ss.  
                )

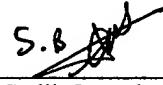
On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared  
Donald F. Gordon, personally known to me (or proved to me on the basis of satisfactory evidence)  
to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed  
the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon  
behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

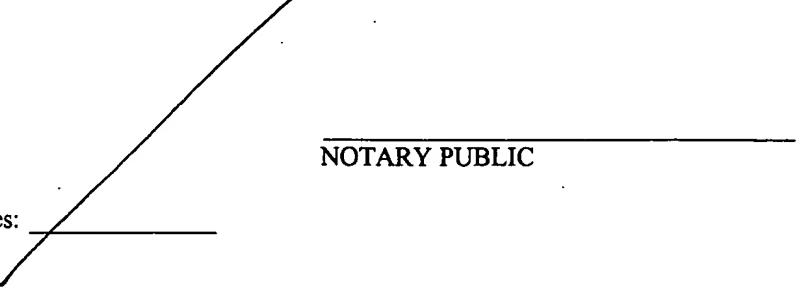
Dated: 7-11-00

  
Sadik Bayrakeri

STATE OF CALIFORNIA )  
COUNTY OF ) ss.  
                )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared  
Sadik Bayrakeri, personally known to me (or proved to me on the basis of satisfactory evidence)  
to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed  
the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon  
behalf of which the person acted, executed the instrument.

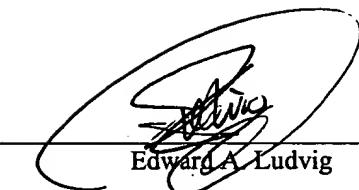
WITNESS my hand and official seal.

  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

Assignment  
Attorney Docket No.: 19880-001620  
Page 3

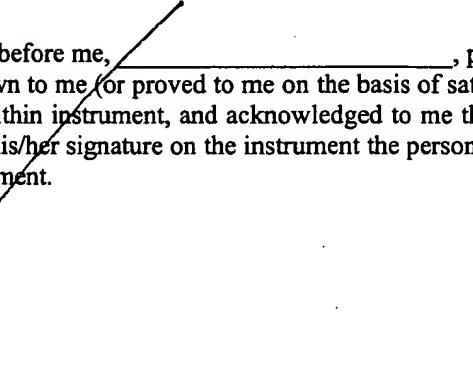
Dated: 07/11/2020

  
Edward A. Ludvig

STATE OF CALIFORNIA      )  
                                ) ss.  
COUNTY OF                )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared  
Edward A. Ludvig, personally known to me (or proved to me on the basis of satisfactory evidence)  
to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed  
the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon  
behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

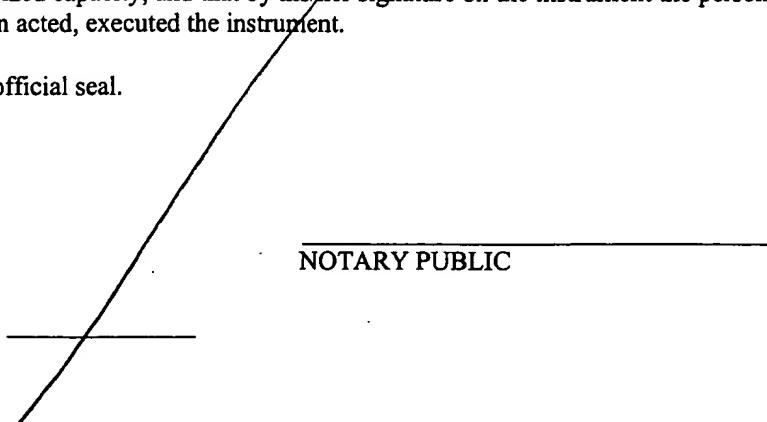
Dated: 2000/07/11

  
Eugene Gershtein

STATE OF CALIFORNIA      )  
                                ) ss.  
COUNTY OF                )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared  
Eugene Gershtein, personally known to me (or proved to me on the basis of satisfactory evidence)  
to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed  
the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon  
behalf of which the person acted, executed the instrument.

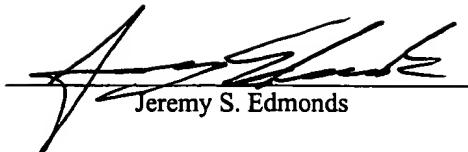
WITNESS my hand and official seal.

  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

Assignment  
Attorney Docket No.: 19880-001620  
Page 4

Dated: 7/14/00



Jeremy S. Edmonds

STATE OF CALIFORNIA )  
                          )  
COUNTY OF             ) ss.

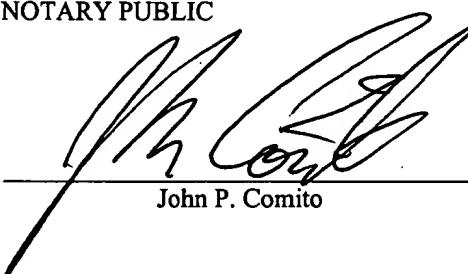
On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared Jeremy S. Edmonds, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

Dated: 7/14/2000



John P. Comito

STATE OF CALIFORNIA )  
                          )  
COUNTY OF             ) ss.

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared John P. Comito, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

Assignment  
Attorney Docket No.: 19880-001620  
Page 5

Dated: August 3, 2000

Alfred Li  
Alfred Li

STATE OF CALIFORNIA )  
                        )  
COUNTY OF             ) ss.

On \_\_\_\_\_, before me, Alfred Li, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

PA 3076493 v1



VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS  
(37 CFR 1.9(f) & 1.27(c)) - SMALL BUSINESS CONCERN

Applicant or Patentee: Donald F. Gordon et al.  
Application or Patent No.: 09/538,562  
Filed or Issued: March 29, 2000  
Title: DEMAND-CAST SYSTEM AND BANDWIDTH MANAGEMENT FOR DELIVERY OF INTERACTIVE PROGRAMMING

I hereby declare that I am:

the owner of the small business concern identified below:  
 an official of the small business concern empowered to act on behalf of the concern identified below.

Name of Small Business Concern: DIVA Systems Corporation  
Address of Small Business Concern: 800 Saginaw Drive  
Redwood City, CA 94063

I hereby declare that the above-identified small business concern qualifies as a small business concern as defined in 13 CFR 121.12, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees to the United States Patent and Trademark Office, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention, entitled DEMAND-CAST SYSTEM AND BANDWIDTH MANAGEMENT FOR DELIVERY OF INTERACTIVE PROGRAMMING by inventors Donald F. Gordon, Sadik Bayrakeri, Edward A. Ludvig, Eugene Gershtein, Jeremy S. Edmonds, John P. Comito, and Alfred Li described in:

the specification filed herewith;  
 Application No. 09/538,562, filed March 29, 2000;  
 Patent No.                         , issued                         .

If the rights held by the above identified small business concern are not exclusive, each individual, concern or organization having rights in the invention is listed below\* and no rights to the invention are held by any person, other than the inventor, who would not qualify as an independent inventor under 37 CFR 1.9(c) if that person made the invention, or by any concern that would not qualify as a small business concern under 37 CFR 1.9(d), or a nonprofit organization under 37 CFR 1.9(e).

\*NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27)

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
  
 Individual       Small Business Concern       Nonprofit Organization

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
  
 Individual       Small Business Concern       Nonprofit Organization

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b))

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Name of Person Signing: Stephanie Storms  
Title of Person if Other than Owner: Senior Vice President  
Address of Person Signing: 800 Saginaw Drive  
Redwood City, CA 94063

Signature Stephanie A. Storms Date 7/12/00



## DECLARATION

As a below named inventor, I declare that:

My residence, post office address and citizenship are as stated below next to my name; I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: **DEMAND-CAST SYSTEM AND BANDWIDTH MANAGEMENT FOR DELIVERY OF INTERACTIVE PROGRAMMING** the specification of which was filed on March 29, 2000 as Application No. 09/538,562.

I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above. I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56. I claim foreign priority benefits under Title 35, United States Code, Section 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed.

### Prior Foreign Application(s)

Country	Application No.	Date of Filing	Priority Claimed Under 35 USC 119

I hereby claim the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below:

Application No.	Filing Date
60/178,100	January 26, 2000

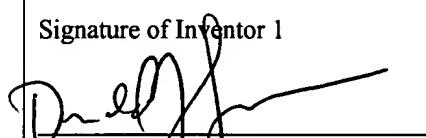
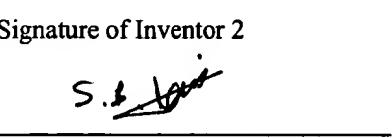
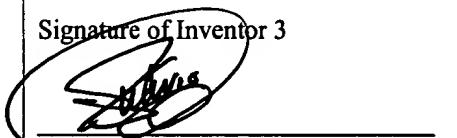
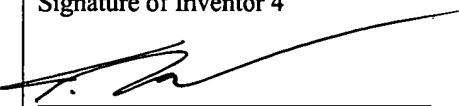
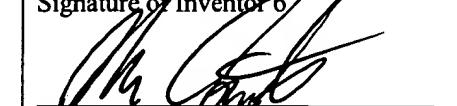
I claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, Section 1.56 which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

Application No.	Date of Filing	Status
09/524,854	March 14, 2000	Pending

Full Name of Inventor 1:	Last Name: <b>GORDON</b>	First Name: <b>DONALD</b>	Middle Name or Initial: <b>F.</b>
Residence & Citizenship:	City: <b>Los Altos</b>	State/Foreign Country: <b>California</b>	Country of Citizenship: <b>United States</b>
Post Office Address:	Post Office Address: <b>465 Gabilan Street #10</b>	City: <b>Los Altos</b>	State/Country: <b>California</b> Postal Code: <b>94022</b>
Full Name of Inventor 2:	Last Name: <b>BAYRAKERI</b>	First Name: <b>SADIK</b>	Middle Name or Initial:
Residence & Citizenship:	City: <b>Foster City</b>	State/Foreign Country: <b>California</b>	Country of Citizenship: <b>Turkey</b>
Post Office Address:	Post Office Address: <b>733 Shell Boulevard #104</b>	City: <b>Foster City</b>	State/Country: <b>California</b> Postal Code: <b>94404</b>

Full Name of Inventor 3:	Last Name: <b>LUDVIG</b>	First Name: <b>EDWARD</b>	Middle Name or Initial: <b>A.</b>
Residence & Citizenship:	City: <b>Redwood City</b>	State/Foreign Country: <b>California</b>	Country of Citizenship: <b>Canada</b>
Post Office Address:	Post Office Address: <b>831 Canyon Road</b>	City: <b>Redwood City</b>	State/Country: <b>California</b> Postal Code: <b>94061</b>
Full Name of Inventor 4:	Last Name: <b>GERSHTEIN</b>	First Name: <b>EUGENE</b>	Middle Name or Initial:
Residence & Citizenship:	City: <b>Redwood City</b>	State/Foreign Country: <b>California</b>	Country of Citizenship: <b>United States</b>
Post Office Address:	Post Office Address: <b>1418 Valota Road</b>	City: <b>Redwood City</b>	State/Country: <b>California</b> Postal Code: <b>94061</b>
Full Name of Inventor 5:	Last Name: <b>EDMONDS</b>	First Name: <b>JEREMY</b>	Middle Name or Initial: <b>S.</b>
Residence & Citizenship:	City: <b>Castro Valley</b>	State/Foreign Country: <b>California</b>	Country of Citizenship: <b>United States</b>
Post Office Address:	Post Office Address: <b>18923 Sydney Circle</b>	City: <b>Castro Valley</b>	State/Country: <b>California</b> Postal Code: <b>94546</b>
Full Name of Inventor 6:	Last Name: <b>COMITO</b>	First Name: <b>JOHN</b>	Middle Name or Initial: <b>P.</b>
Residence & Citizenship:	City: <b>Redwood City</b>	State/Foreign Country: <b>California</b>	Country of Citizenship: <b>United States</b>
Post Office Address:	Post Office Address: <b>907 Pleasant Hill Road</b>	City: <b>Redwood City</b>	State/Country: <b>California</b> Postal Code: <b>94061</b>
Full Name of Inventor 7:	Last Name: <b>LI</b>	First Name: <b>ALFRED</b>	Middle Name or Initial:
Residence & Citizenship:	City: <b>Redwood City</b>	State/Foreign Country: <b>California</b>	Country of Citizenship: <b>Hong Kong</b>
Post Office Address:	Post Office Address: <b>161 Positano Circle</b>	City: <b>Redwood City</b>	State/Country: <b>California</b> Postal Code: <b>94065</b>

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Signature of Inventor 1  Donald F. Gordon	Signature of Inventor 2  Sadik Bayrakeri	Signature of Inventor 3  Edward A. Ludvig
Date <b>7-11-00</b>	Date <b>7-11-00</b>	Date <b>7/11/2000</b>
Signature of Inventor 4  Eugene Gershstein	Signature of Inventor 5  Jeremy S. Edmonds	Signature of Inventor 6  John P. Comito
Date <b>2000/07/11</b>	Date <b>7/11/00</b>	Date <b>7/11/2000</b>

Signature of Inventor 7

Alfred Li

Date August 3, 2000

PA 3076507 v1